IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

S.B. CIVIL WRIT PETITION No.1923/1999
RAM DAYAL & Anr. V/s THE STATE OF RAJ. & Ors.

DATE OF ORDER ::: 15th MARCH,2007

PRESENT

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri Pawan Pareek for the petitioners.
Shri H.V. Nandwana Deputy Government
Advocate for State.

REPORTABLE

The petitioners have filed this writ petition challenging the judgments of the Board of Revenue dated 24.11.1997 and that of the Revenue Appellate Authority dated 10.11.1994 and have prayed for upholding the judgment of the Assistant Collector, Nandwai dated 7.10.89 whereby their revenue suit was decreed.

Factual matrix of the case is that the predecessor in title of the petitioner namely Medue filed suit for declaration for permanent injunction with regard to 2 bighas and 15 bishwas of land of Khasra No.196/3 situated in revenue village Chetari, Tehsil Nadbai, District Bharatpur. The case set up by the plaintiff before the court of Assistant Collector was that he was in possession of the land and was recorded Khatedar tenant. During the last settlement proceedings, his name was recorded in Khasra Girdawari of Samvat 2029 to 2032. But his name was deleted therefrom for subsequent period which adversely affected their interest. The Tehsildar, Nadbai was bent upon ejecting the plaintiff and has in fact initiated proceedings against him u/s 91 of the Land Revenue Act, 1956 (for short “the Act”). Prayer was made for decree of

declaration of ownership and permanent injunction. The revenue suit was proceeded exparte against the defendants by order of the Assistant Collector, Nadbai dated 19.9.1986 and in these circumstances, it was decreed in favour of the plaintiff on 7.10.89 declaring him to be Khatedar tenant of the land. Aggrieved thereby, the State of Rajasthan field an appeal before the Revenue Appellate Authority, Bharatpur (for short "the Authority") who by order dated 1.8.87 allowed the appeal thereby reversing the judgment and decree passed by the Assistant Collector. The petitioners thereupon filed a further appeal before the Board of Revenue u/s 224 of the Rajasthan Tenancy Act. The Board by its judgment dated 24.11.97 has however dismissed the appeal.

I have heard Shri Pawan Pareek, the learned counsel for the petitioners and Shri

H.V. Nandwana, learned Deputy Government Advocate for the State.

Shri Pawan Pareek, the learned counsel for the petitioners argued that the plaintiff was in possession of the land in dispute and on the basis thereof, the Assistant Settlement Officer by issuing Parcha Lagan dated 16.5.74 in his favour has acknowledged him to be Khatedar of that land. Mutation No.12 was attested in the name of plaintiff and divided Khasra No.196 of which Khasra No.196/3 in an area of 1 bigha and 15 bishwas was recorded in favour of plaintiff Lahri. The order of the Assistant Settlement Officer dated 16.5.74 and the attestation of Mutation No.12 by Tehsildar dated 10.9.75 were not challenged by the respondents before any Superior Authority / Appellate Forum by filing any appeal. The order thus attained finality.

The Tehsildar committed an error of law in cancelling the mutation No.12 by order dated 2.1.1977 two years after the mutation was attested. Shri Pawan Pareek argued that even if that the Tehsildar has the power to review, then also the limitation prescribed for filing review petition was only 30 days while the review in this case has been made after two years. The learned counsel for the petitioners argued that the Board of Revenue has recorded a wrong finding in holding that the plaintiff based his suit merely on the basis of possession but the records do not indicate that he actually was in possession prior to Samvat 2012. According to him, the plaintiff was shown as Gair Khatedar tenant in Ex.P2 and note was appended regarding the order of Assistant Settlement Officer. The order passed by the Assistant Settlement Officer having not been

challenged, the learned Board of Revenue was not justified in holding that it was the case of recording wrong entries. He argued that the fact that the plaintiff was in possession of land at the time of commencement of Rajasthan Tenancy Act and therefore by virtue of section 15 thereof was entitled to be conferred with the Khatedari rights was substantiated even from the pleadings of the respondent State in para No.6 of the memorandum of appeal filed before the Authority in which it has been acknowledged that the plaintiff was recorded as sub-tenant at the time of abolition of Jamidari recorded as Gair Maurusidar. He argued that Jamidari was abolished with the enforcement of Rajasthan Jamidari and Veshwadari Abolition Act, 1959 and on abolition of the State with effect from 15.11.1959. The plaintiff thus

became Khatedar tenant. This aspect has been completely ignored by the Authority as well as the Board of Revenue. He further argued that the Board of Revenue although upheld the arguments of the petitioner that the judgment passed by the Authority was not in conformity with the provisions of O. 41 R. 21 of CPC inasmuch as the Authority did not render its judgment issue wise. Yet, the Board has upheld the very same judgment. The Tehsildar on his own was not competent to set aside the mutation No.12 and only way open to him was to make the request to the Collector for a reference to the Director of Land Records or the Board of Revenue in accordance with the provisions of section 82 of the Act. He, therefore, submitted that the impugned judgment be set aside. The writ petition may be allowed in terms of the prayers.

On the other hand, Shri H.V. Nandwana, learned Deputy Government Advocate for the State opposed the writ petition and argued that the Assistant Settlement Officer had no power whatsoever to confer Khatedari rights upon the petitioner. The Settlement Officer has the limited jurisdiction with regard to the settlement of the revenue land by reflecting therein what was the existing position as regards the records of the right. Shri H.V. Nandwana further argued that the petitioner is now seeking to raise such arguments before this court which were never raised by him either before the Authority or even before the Board of Revenue. The arguments raised with regard to filing of the requirement of review or appeal or for making reference are liable to be rejected because no such arguments were raised before the authorities below. Shri

Nandwana further argued that the plaintiff did not set up the case of conferment of the Khatedari rights by virtue of section 15 of the Rajasthan Tenancy Act, according to which those in possession of the land at the time of commencement of that Act could have been granted Khatedari rights. While pointing out from the plaint of the suit filed by the plaintiff before the Revenue court, which is Annexure 1, Shri Nandwana submitted that the petitioner has not at all set up any case with reference to section 15 of the Rajasthan Tenancy Act and therefore now at this stage he is debarred from raising such argument. While referring to the judgment of the Authority, he submitted that the Authority has rightly held that the plaintiff could be recorded as Khatedar tenant by the Assistant Settlement Officer either on the basis of allotment

made in his favour or regularisation his possession. When the very basis of recording him as Khatedar, the Authority was right in reversing the judgment of the Assistant Collector. The Board of Revenue also rightly upheld the judgment of the Authority and the Board also held that the plaintiff has not been able to show that he was in possession of of the disputed land prior to Samvat 2012 and there was therefore no question of conferment of any Khatedari rights upon him even on that basis. He argued that the mere fact that Tehsildar cancelled mutation by reviewing his earlier order after two years does not mean that he had no power to do so. Such power having actually been exercised and the matter scrutinised by the Authority and the Board of Revenue, according to him the impugned orders cannot be said to have been passed

without jurisdiction. Even otherwise, Shri Nandwana submitted that the Board of Revenue has under section 9 of the Land Revenue Act can exercise such power in exercise of supervisory jurisdiction. Entire matter having been scrutinised by the Board, the impugned judgment has rightly been passed. He therefore submitted that the writ petition be dismissed.

I have given my thoughtful consideration to the arguments advanced by both the learned counsel for the parties and perused the material on record.

A perusal of the judgment passed by the first revenue court of the Assistant Collector indicates that he has accepted the claim of the plaintiff about his Khatedari rights over the land in dispute merely on the basis of Parcha Lagan Ex P2 which was issued by the Assistant Settlement Officer.

It may be true that mutation No.12 was attested in favour of the plaintiff on 10.9.1975 but the Tehsildar by his order dated 2.11.1977 set aside the said mutation. When the petitioner challenged the order dated 2.11.1977, the matter has been scrutinised in all the revenue courts below. The claim of the plaintiff found favour with the first revenue court on the basis of the said Paracha Lagan. The Assistant Collector has found that the petitioner was recorded as Khatedar on the basis of prolonged possession similar to one Ram Swaroop. The copy of judgment dated 1.7.1987 passed in favour of Ram Swaroop was produced for perusal of that court. It was simply on this basis that the Assistant Collector found the case of the petitioner proved. No contrary document or argument has been produced before the Assistant Collector

because the matter was proceeded exparte against the Government. In appeal, however the Authority scrurinsed the matter and held that the Assistant Settlement Officer had no power to issue Patta of the land in dispute in favour of the plaintiff and confer Khatedari rights on him. The Authority sunccintly stated the law on the subject that the plaintiff could not be recorded as Khatedar in the absence of either any allotment letter in his favour or an order of regularisation based on prolonged possession by a competent officer. Even if it is accepted that the Tehsildar committed illegality in suo moto setting aside such mutation, the plaintiff would still be required to show as to what was the legal foundation of his entitlement for being recorded him as Khatedar. The plaintiff cannot be allowed to take

advantage of wrong entries made by the settlement. Therefore the Authority held that even the Tehsildar is assumed to have committed a mistake, yet that was no sufficient ground for passing a decree in favour of the plaintiff. When the matter was examined by the Board, it also found that the only basis on which the plaintiff claimed Khatedari right was his possession over the land but the documents on record in fact did not indicate that the plaintiff was in possession of the disputed land even prior to Samvat 2012. In fact, the Board found the Khasra Girdaries of Samvat 2029 to 2032 indicated that the land was described as Siwai Chak. The mutation was attested in favour of the plaintiff on the basis of Parcha Lagan issued by the Assistant Settlement Officer on 16.5.1974. According to the Board, it was not a legal

basis because when the plaintiff was claiming that he was recorded Khatedar on the basis of long possession, he was required to prove whether he was in possession even prior to Samvat 2012. The Board therefore rightly held that the plaintiff failed to prove his case either u/s 13 or 15 or section 19 of the Rajasthan Tenancy Act, the learned trial court committed an error of law in decreeing the revenue suit.

I have carefully analysed the pleadings of the para 6 of the appeal filed before the Authority which has been heavily relied upon by the petition. All that has been stated in that para is that at the time of resumption of Jamidari, the plaintiff was recorded as Gair Maurusidar and no document has been produced by the plaintiff to show that he was recorded as such Gair

Maurusidar. The pleading does not appear to have been happily worded but still the fact remains that the plaintiff was required to not only prove his case if at all he wanted to acquire Khatedari right by virtue of long possession but also plead such case. The plaintiff however did not set up any such plea which is evident from the perusal of the plaint of the suit which has been placed on record. It appears that the petitioner did not at all plead the case case that he was entitled to Khatedari rights by virtue of section 15 of the Rajasthan Tenancy Act. The Board, in my considered view was therefore right in holding that the petitioner has not proved that he was in possession over the disputed land prior to Samvat 2012, the period corresponding to commencement of the Rajasthan Tenancy Act. The cases which the

petitioner is now seeking to develop with the help of the provisions of Rajasthan Jamidari and Veshwadari Abolition Act, 1959 describing the plaintiff as Gair Maurusidar at the time of abolition of the State was nowhere in sight when the original suit was filed. Moreover the argument that the order of mutation could not be reviewed after two years and that the order not having been challenged in appeal has become final, were not raised in the original court. In spite of these deficiencies, if they may be so called, and also the argument that the Tehsildar did not grant an opportunity of hearing prior to cancellation of mutation, the fact remains that to claim Khatedari right as rightly held by the Authority, the plaintiff has to show how he is entitled to claim to such Khatedari right. The Authority was correct in holding that decreeing the

suit of the plaintiff would have the affect of reviving the order which was otherwise illegal. Only basis on which the plaintiff could be granted Khatedari rights was either under any allotment made in his favour by the competent authority or regularisation of his possession if at all it was accepted to a long possession on the basis of trespass, by the competent authority. Neither of them was there in the case of plaintiff. Objection of the learned counsel for the petitioner is that in the case of the present nature even if mutation of Khatedari rights was wrongly recorded and mutation was wrongly attested, the only way available to the Collector was to make a reference to the Board of Revenue, cannot be sustained because the issue has been examined not only by the Authority but also by the Board of Revenue. Even if the matter has not

reached to it by way reference u/s 229 of the Rajasthan Tenancy Act and section 82 of the Land Revenue Act, the Board of Revenue did examine the matter thread bare when it was brought before it by way of appeal at the instance of none other than the petitioner himself.

So far as the judgment relied upon by the learned counsel in Mishri Lal v/s Ram Khilari – 1987 RRD 202 is concerned, that was case in which the plaintiff had set up a case right from beginning in the revenue suit that he became a Khatedar by virtue of section 15 of the Rajasthan Tenancy Act and that the SDO dismissed the suit but the Authority on having found that he was in cultivatory possession of the land as Gair Maurusidar from Samvat 2004, on that basis the court held that the plaintiff fell within the definition of tenant and was

entitled to be recorded as Khatedar tenant after repeal of Bharatpur Revenue Code in 1956 in accordance with the provisions of section 15 of the Rajasthan Tenancy Act. No such case was set up by the plaintiff in the present matter when he filed the original suit as would be evident form the copy of the plaint on record. The judgment is therefore distinguishable and does not help the petitioner.

In view of what has been discussed above, I do not find any merit in this writ petition and the same is therefore dismissed. There shall be no order as to costs.

(Mohammad Rafiq),J.

Chauhan/